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Attorneys for Plaintiffs

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MONTANA  
GREAT FALLS DIVISION**

HAROLD L. DUSTY BULL, as  
Personal Representative of the  
Estate of CARRIE G. OLD  
PERSON, YVONNE M. UPHAM,  
HAROLD L. DUSTY BULL and  
CLAYTON G. OLD PERSON,  
individually,

Plaintiffs,

vs.

UNITED STATES OF AMERICA,

Defendant.

Cause No. \_\_\_\_\_

**COMPLAINT**

COMES NOW the Plaintiffs, by and through their attorney of record  
Thane Johnson of Johnson, Berg & Saxby, PLLP, and for their cause of  
action against the Defendant state and allege as follows:

- 1 1. At all times relevant hereto, Plaintiffs Harold L. Dusty Bull, the  
2 deceased Carrie G. Old Person, Yvonne M. Upham and Clayton G.  
3 Old Person were and/or are citizens of Glacier County, Montana.
- 4 2. This Court has jurisdiction over this case pursuant to the Federal  
5 Tort Claims Act, 28 U.S.C. 2671, *et seq.*, in that the claim arises  
6 from the Government's conduct in providing health care services at  
7 Blackfeet Community Hospital (BCH) in Browning, Montana. BCH  
8 is an Indian Health Services (IHS) funded facility operated by the  
9 United States. The negligent acts and omissions that are the  
10 subject of this action were committed by the Government's agents  
11 and employees while acting within the course and scope of their  
12 employment. This Court has exclusive jurisdiction over tort claims  
13 brought against the United States pursuant to 28 U.S.C. §1346(b).
- 14 3. Plaintiffs' claims were filed in writing with the Department of Health  
15 and Human Services on May 13, 2011. More than six months have  
16 elapsed since the claims were filed, and the United States has not  
17 accepted or denied the claims. Accordingly, Plaintiffs have  
18 appropriately exhausted their administrative remedies.
- 19 4. The acts and omissions giving rise to this claim occurred in Glacier  
20 County, Montana, which is within this judicial district. Venue is  
21 proper in this Court under 28 U.S.C. §§1391(e) and 1402(b).  
22 Venue also is proper in this division under this Court's Local Rule  
23 1.11, because Plaintiffs reside in Glacier County and the tort  
24 occurred in Glacier County.

- 1 5. On December 6, 2009 through December 9, 2009, Carrie Old  
2 Person received an overdose of Cerebyx (Dilantin) at BCH. The  
3 prescribing of said Dilantin was a result of a misdiagnosis of Carrie  
4 Old Person for an acute intracranial hemorrhage.
- 5 6. Carrie Old Person remained a patient of BCH from December 6,  
6 2009 until December 9, 2009 when the overdose was discovered, at  
7 which time she was transferred to the Kalispell Regional Medical  
8 Center.
- 9 7. The standard of care from 2009 to the present required that Dilantin  
10 be administered in significantly less quantities than that delivered to  
11 Carrie Old Person by BCH. The standard of care from 2009 to the  
12 present required that Dilantin be administered only in the event that  
13 a patient is diagnosed with an acute intracranial hemorrhage. BCH  
14 had a continuous duty to properly diagnose Carrie Old Person and  
15 appropriately administer and dispense Dilantin to Carrie Old  
16 Person. Failing to properly administer and dispense Dilantin and  
17 the failure properly diagnose Carrie Old Person was negligent.
- 18 8. BCH's negligence caused the death of Carrie Old Person on  
19 December 24, 2009.
- 20 9. Plaintiff Harold L. Dusty Bull is the son and Personal Representative  
21 of Carrie G. Old Person who passed away on December 24, 2009.
- 22 10. Plaintiff Yvonne M. Upham is the daughter of the Decedent.
- 23 11. Plaintiff Clayton G. Old Person is the son of the Decedent.
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1 12. Carrie Old Person's death has deprived Harold L. Dusty Bull,  
2 Yvonne M. Upham and Clayton G. Old Person of her love, affection,  
3 companionship and services.

4 13. At the time of her death, Carrie Old Person served a very important  
5 function for the Blackfeet Tribe in that she was a teacher of the  
6 language and the holder and carrier of the songs, dances, and  
7 traditions. She counseled the leaders of the Blackfeet Tribe  
8 including but not limited Earl Old Person.

9 14. Carrie Old Person's death has given rise to wrongful death and  
10 survival claims, both of which are asserted herein by Plaintiffs.

11 15. Plaintiffs have suffered damages including, but not limited to, loss of  
12 support, society, comfort, guidance, education, care,  
13 companionship, non-compensated services, burial expenses and  
14 funeral services, reasonable medical charges, grief, sorrow, mental  
15 anguish, and reasonable compensation for the suffering of Carrie  
16 Old Person.

17 WHEREFORE, Plaintiffs pray for judgment against the United  
18 States as follows:

19 1. For damages to be proven at the time of trial, including but not  
20 limited to damages for loss of support, society, comfort, guidance,  
21 education, care, companionship, non-compensated services, burial  
22 expenses and funeral services, reasonable medical charges, grief,  
23 sorrow, mental anguish, and reasonable compensation for the  
24 suffering of Carrie Old Person;  
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2. For all provable damages for loss of established course of living, loss of household services, loss of consortium with children and grief, suffering and mental anguish;
3. For Plaintiffs allowable costs for bringing this lawsuit; and
4. For such other and further relief as this Court deems just and proper.

DATED this 11<sup>th</sup> day of January, 2012.

JOHNSON, BERG, & SAXBY, PLLP

*/s/ Thane Johnson*

By: \_\_\_\_\_

Thane Johnson  
Attorneys for Plaintiffs